



TEN TIPS FOR TRANSITIONING TO LEGAL WRITING

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Perhaps before you came to law school you were a journalist. Or perhaps you've published scholarly works in the field of Economics or English. Maybe you wrote short stories or plays. Whatever kind of writing you did before, after writing your first legal memo you will notice that legal writing is different, and that transitioning to legal writing is difficult. Remember through this process that good critical writing "in a particular field does not simply happen as a result of a person's mind maturing, but is a consequence of experience gathered by working with others more experienced in some particular discourse community."¹ In other words, think of learning the skill of legal writing in terms of being socialized into the community of legal readers and writers rather than simply as a small variation on something you've already been doing for years. Here are a few tips to make the transition to legal writing go more smoothly:

1. Be Prepared for Your Writing to Worsen Before It Improves

As students new to the legal community, and as you struggle to acquire new legal writing skills, expect temporarily to lose skills you once mastered.² You may never have struggled with organizing a paper or writing a clear and coherent sentence before, but don't be frustrated when some of the feedback you receive on your legal writing reflects writing problems you've never had before. Legal writing imposes new demands on your mind. There are lots of new things that you are thinking about when you sit down to write your first memo, like how to follow the structure of a legal document, how to synthesize a rule, and how to write an effective case comparison. As you focus on mastering these new skills, it is often simply too much to focus simultaneously on sentence structure or effective paragraphs.

This should prepare you for two things. First, don't be dismayed when some of the feedback you receive reflects writing problems you thought you had overcome long ago. This is normal and is simply evidence that you're learning new things. Second, as you revise and edit your legal writing, read through your document several times to look for different issues. Dedicate at least one read-through to spotting ordinary writing issues that may exist apart from the new legal writing skills you're trying to master.

¹ Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development*, 1 L. WRITING 1, 9 (1991).

² *Id.* at 15.

2. Read Great Examples of the Types of Documents You Are Learning to Write

The judicial opinions that constitute the meat of what you read as a law student are very different documents (that serve a very different purpose) from the memos and briefs you will write as a practitioner. Although not assigned for class, take the time to read a few examples of what constitutes an exemplary memo or brief in our field. Briefs in most federal cases are readily available on Lexis and Westlaw—try a court of appeals brief by a well-respected practitioner in a recent case. Ask a writing professor to see a few of the best objective memos he or she has received. Reading well-written documents of the type you are drafting will help you become a socialized member of the legal writing community.

3. Learn the Structure of Legal Writing Now So You Can Adapt It Later

When you learned to write a five-paragraph essay, you wrote five paragraphs, each with a designated function—an introduction, three main points, and a conclusion. When you wrote essays in college, you broke these rules to cover as many points as you needed to cover, without regard to the formula. The same goes for legal writing. It will seem formulaic and perhaps repetitive at first always to include a topic sentence immediately after a pointhead, or to roadmap your discussion. But stick to it. Once you learn the conventions of legal writing, you will be able to “break the rules,” or perhaps more accurately, to adapt the formula to better serve your needs as a more advanced writer.

4. Use Your Writing Process as an Organizational Tool

Some writers have never written a document without an outline or other form of pre-writing, but some writers come to law school never having found pre-writing useful. As a legal writer, pre-writing strategies can both save you time and effort and improve your legal writing. For instance, most well-written legal documents are broken down into sections and subsections that help guide your reader through your analysis by including signposts for what will come ahead. Developing these signposts first during your pre-writing process can help you determine if you have organized your document in the most reader-friendly way.

You can begin thinking about organization before you write in many ways. You may find it useful to organize the product of your research in particular piles or folders that will correspond to sections in your final document. A “brain-dump” on paper before you actually begin writing can also help you begin to see where ideas and organizational structure are beginning to coalesce. Outlines are also a great way to pre-write legal documents. In addition to encouraging you to think about organization before you begin to write, the pre-writing process can also give you an idea whether you’ve completed enough research to draft, or if there are sections of your analysis where your case law is thin and would benefit from a second round of searching. Whatever writing process works for you, use your process to think about organization early.

5. Avoid the Temptation to Write In Legalese

As a first year law student, you are primarily assigned cases to read. Sometimes the judges who authored the opinions you are reading are great writers. Sometimes they are not. In any case, you will be reading many opinions that were written a century ago and which no longer

represent the writing conventions of the profession. Today, concise and readable legal writing is expected from lawyers, and you should be cautious of emulating the writing style of judges from times past. It is tempting to dress up your writing in legalese like “heretofore” and “aforementioned” because as a writer new to the legal profession you may confuse the jargon of the profession of yore with the expected conventions of the current legal community.

You will learn to distinguish between words and phrases that are simply jargon and can be re-phrased or omitted, and words and phrases that have a special legal meaning, or are “terms of art.” You should use terms of art in your writing and use them consistently across a document. The ability to distinguish between the two will come with time and exposure to legal writing. In general try to avoid the temptation to write in legalese and instead stick to plain and readable English.

6. Do Not Over-Quote Cases

As a novice in the legal community, there is an overwhelming sense that “the law is the law, and you can’t paraphrase the language of the law.”³ Novice legal writers will always prefer to quote language from a judicial opinion to serve as a “rule statement,” for example, rather than synthesize various judicial opinions to construct what might be a better rule more appropriate to the facts of their case. This is a normal tendency. After all, judges are well-respected experts in our field and novice writers feel under-qualified to say what the law is. Be conscious of your tendency to stick to the authority of the concrete, and strive to be comfortable enough in the law and in your research to paraphrase and synthesize rather than quote from a case for every proposition. Both your legal analysis and your legal writing will improve with the effort.

7. Learn to Be a Critical Reader of Your Own Writing

You already know how to revise and edit certain types of writing. But learning how to be a critical reader of your own legal writing is also a skill you must master. In addition to spotting ordinary writing issues, you must also learn to look for issues in legal structure and analysis. These can be difficult for you to spot in your own writing because you as the researcher and writer know the case law so well that you may assume things that your reader doesn’t know, and also because you often will thoroughly convince yourself of your position by the time you’ve written a draft (particularly with regard to persuasive writing). Ask your professors and your peers for their tips on becoming your own best editor.

Some people prefer to compose a reader-based outline. In one version of this technique, you write one word next to each paragraph of your document that sums up what that paragraph is about and what function it serves. Another way to construct a reader-based outline is to copy and paste the topic sentence (or topic and concluding sentences) of each paragraph into a separate document. This can help you see organizational issues when you look at the interrelationship of those summary words or sentences to determine whether your paragraphs make sense in the order you’ve placed them.

Some people prefer a checklist approach that focuses on structure—did I include a topic sentence? Did I follow that sentence with a rule? Does my case comparison follow the structure I

³ *Id.* at 24.

was taught? Making yourself slow down as an editor and check off that all the component parts of your document are present and in order can also help you spot places where your analysis may be spotty or doesn't logically follow. Whatever technique works for you, be sure that you test yourself on the solidity of your analysis as you edit your own work.

8. Expect to Re-write, Not Just Proofread

Many students come to law school never having substantially revised or re-written a document. These writers are accustomed to writing a document in one go, then proofreading it for grammatical and spelling errors and submitting it for review. If this is you, expect substantially to alter your writing process. Legal documents are the product of a lot of research and a lot of thinking. Most of that research and thinking doesn't happen in one go. Instead, after initial research and drafting, you'll always find that there are important sections of your document for which you have little to no information, or that the way you structured the document isn't actually the most logical way to present the information. You will very rarely, if ever, write a legal document in one sitting, proofread it, and send it on its way. Instead, build enough time into your writing process to research, pre-write, draft, research again, think, re-organize, re-write, revise, and then proofread—and then to do it all over again after you have received feedback.

9. Talk About Legal Writing with Professors, Fellows, and Peers

You have many resources at your disposal—fellow students and teachers who are ready and willing to talk about your writing with you. Talking about your legal writing with socialized members of the legal writing community is one of the best ways to improve it. It is difficult to write for a new discourse community, and it can be even more difficult for a novice legal writer to spot deficiencies in his or her own writing and reasoning. Use the resources available to you to get feedback on your legal writing that you can use to help incorporate the conventions of the profession into your writing. Not only will your writing improve, but you'll simultaneously be learning another skill expected of attorneys. In practice, you will be expected to discuss and defend your work orally. Attorneys rarely just write a document alone in their office and submit it to a superior or to a court. Instead, in practice, you will receive multiple rounds of feedback from superiors and peers both on the legal substance of your document and the conventions and style of the piece. You must be able to accept and utilize this feedback in re-drafting. Practice that skill early by talking about your legal writing with your professors, fellows, and peers.

10. Invest the Time Now, Reap the Benefits Later

You are busy as a first-year student. But remember that Legal Research & Writing is the only class you take as a first-year student that really teaches you a skill marketable to employers. Invest the time now to focus on becoming a socialized member of the legal discourse community, and you will reap the benefits of becoming an excellent legal writer as you enter the job market for summer employment and post-graduation positions. Everyone anticipates that you will forget most of what you learned in law school—except they will expect you to remember, and to have mastered, legal writing.